

Jan L. Cook, M.D.

CONFIDENTIAL

March 6, 2006

Boston, MA

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MDL No. 1456

C.A. No. 01-CV-12257-PBS

\* \* \* \* \*

IN RE: PHARMACEUTICAL INDUSTRY \*  
AVERAGE WHOLESALE PRICE LITIGATION \*

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THIS DOCUMENT RELATES TO ALL ACTIONS \*

\* \* \* \* \*

VOLUME I

DEPOSITION OF JAN L. COOK, M.D., a witness called on  
behalf of Johnson & Johnson, pursuant to the Federal  
Rules of Civil Procedure, before Jessica L.  
Williamson, Registered Merit Reporter, Certified  
Realtime Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the Offices of  
Robins, Kaplan, Miller & Ciresi L.L.P., 800 Boylston  
Street, Boston, Massachusetts, on Wednesday, March 6,  
2006, commencing at 9:37 a.m.

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1 APPEARANCES	1 APPEARANCES, Continued
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9 steven.skwara@bcbsma.com	9
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<p style="text-align: right;">6</p> <p>1 EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3</p> <p>4 Exhibit Cook 007, Confidential document headed</p> <p>5 "Analysis of CMS Average</p> <p>6 Wholesale Price Reform</p> <p>7 Reimbursement for Part B</p> <p>8 Drugs," no Bates stamp..... 249</p> <p>9 Exhibit Cook 008, Document Bates- numbered</p> <p>10 BCBSMA-AWP-12576 - 12587..... 258</p> <p>11 Exhibit Cook 009, Document Bates- numbered</p> <p>12 BCBSMA-AWP-12589 - 12590..... 261</p> <p>13 Exhibit Cook 010, Document Bates- numbered</p> <p>14 BCBSMA-AWP-10609 - 10610..... 267</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Note: Original Cook Exhibits 1 - 10 were retained by</p> <p>20 the court reporter and forwarded to Henderson Legal</p> <p>21 Services, Inc. for distribution.</p> <p>22</p>	<p style="text-align: right;">8</p> <p>1 Q. It's been a while --</p> <p>2 A. Yes.</p> <p>3 Q. -- so let me just run through some of</p> <p>4 the procedural points on the deposition.</p> <p>5 A. Uh-huh.</p> <p>6 Q. If any questions I ask you are unclear,</p> <p>7 please feel free to tell me that, and I'll do my</p> <p>8 best to rephrase, okay?</p> <p>9 A. Okay.</p> <p>10 Q. You also need to answer questions</p> <p>11 audibly rather than nodding or shrugging so that</p> <p>12 the reporter can take those answers down, okay?</p> <p>13 A. Okay.</p> <p>14 Q. And if at any point you need to take a</p> <p>15 break, just let me know and we'll do so, all</p> <p>16 right?</p> <p>17 A. All right.</p> <p>18 Q. Can you describe for me, please, your</p> <p>19 educational background after high school?</p> <p>20 A. Okay. I've got a bachelor's degree in</p> <p>21 psychology from the Southern Illinois University.</p> <p>22 I have after that --</p>
<p style="text-align: right;">7</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 JAN L. COOK, M.D., a witness called</p> <p>4 on behalf of the Johnson &amp; Johnson, having first</p> <p>5 been duly sworn, was deposed and testifies as</p> <p>6 follows:</p> <p>7</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MR. MANGI:</p> <p>10 Q. Morning, Dr. Cook. As I mentioned when</p> <p>11 we met, my name is Adeel Mangi from Patterson</p> <p>12 Belknap Webb &amp; Tyler. I represent Johnson &amp;</p> <p>13 Johnson, which is one of the defendants in this</p> <p>14 litigation. Could you please state your full name</p> <p>15 for the record?</p> <p>16 A. Jan Lorraine Cook.</p> <p>17 Q. Have you ever been deposed before?</p> <p>18 A. Once before.</p> <p>19 Q. What sort of a case was that?</p> <p>20 A. It was a malpractice case.</p> <p>21 Q. And when was that?</p> <p>22 A. In the early '90s.</p>	<p style="text-align: right;">9</p> <p>1 Q. When did you receive that qualification?</p> <p>2 A. In 1978.</p> <p>3 Q. Okay.</p> <p>4 A. '77. Sorry, '77.</p> <p>5 And I have a bachelor's degree from</p> <p>6 Washington University in biology, and that was</p> <p>7 1980. Then I have an MD from the University of</p> <p>8 Chicago, and that was 1984. And I have a master's</p> <p>9 in public health from Harvard, and that was 1993.</p> <p>10 Q. Did you get the MPH as part of a full-</p> <p>11 time course of study?</p> <p>12 A. Yes.</p> <p>13 Q. And how long did it take to get that</p> <p>14 qualification?</p> <p>15 A. Nine months.</p> <p>16 Q. So for about nine months in '92, '93 you</p> <p>17 were a full-time student?</p> <p>18 A. Correct.</p> <p>19 Q. Before you got your MD were there any</p> <p>20 periods of time when you were working full time?</p> <p>21 A. No. I think I was always a student. I</p> <p>22 was always a student in some capacity.</p>

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<p style="text-align: right;">10</p> <p>1 Q. After you got your MD in 1984 where did</p> <p>2 you start working?</p> <p>3 (Ms. Rowe entered deposition room.)</p> <p>4 A. Yes, I did a residency in 1984.</p> <p>5 Q. Where did you do your residency?</p> <p>6 A. Washington University at St. Louis,</p> <p>7 Missouri, Barnes Hospital.</p> <p>8 Q. How long did that residency take?</p> <p>9 A. Three years.</p> <p>10 Q. So that was '84 to '87?</p> <p>11 A. Correct.</p> <p>12 Q. Was that a residency in a particular</p> <p>13 field?</p> <p>14 A. Internal medicine.</p> <p>15 Q. After you completed your residency, did</p> <p>16 you do a specialization or fellowship?</p> <p>17 A. No.</p> <p>18 Q. Did you start practicing medicine?</p> <p>19 A. I did.</p> <p>20 Q. Where did you practice medicine?</p> <p>21 A. Missouri Baptist Hospital in St. Louis,</p> <p>22 Missouri.</p>	<p style="text-align: right;">12</p> <p>1 positions?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And where did you go in 1989?</p> <p>4 A. To Medical East in Braintree,</p> <p>5 Massachusetts.</p> <p>6 Q. Did you go to Medical East as a</p> <p>7 physician or in another capacity?</p> <p>8 A. As a physician.</p> <p>9 Q. How long were you employed at Medical</p> <p>10 East?</p> <p>11 A. Until the summer of 1992.</p> <p>12 Q. For that period from 1989 to 1992 were</p> <p>13 you working continuously as a physician?</p> <p>14 A. Yes.</p> <p>15 Q. And what sort of medicine were you</p> <p>16 practicing at that time?</p> <p>17 A. Primary care.</p> <p>18 Q. Were you a full-time salaried employee</p> <p>19 of Medical East?</p> <p>20 A. Yes.</p> <p>21 Q. In 1992 did you change your positions or</p> <p>22 employers?</p>
<p style="text-align: right;">11</p> <p>1 Q. How long did you work at the Missouri</p> <p>2 Baptist Hospital?</p> <p>3 A. The summer of 1987 until the end of the</p> <p>4 summer of 1989.</p> <p>5 Q. And was your area of practice internal</p> <p>6 medicine?</p> <p>7 A. Intensivist. I worked in a surgical</p> <p>8 ICU.</p> <p>9 Q. I'm sorry, did you say an intensivist?</p> <p>10 A. Intensivist.</p> <p>11 Q. What sort of doctor is an intensivist?</p> <p>12 A. Worked with people who were</p> <p>13 postoperative, had surgery, vascular surgery</p> <p>14 mostly, and I was a physician in charge of -- for</p> <p>15 the shift I was on, in charge of the surgical ICU.</p> <p>16 Q. Were you a full-time employee of the</p> <p>17 hospital?</p> <p>18 A. Yes.</p> <p>19 Q. So you were paid a salary by the</p> <p>20 hospital?</p> <p>21 A. Yes.</p> <p>22 Q. After 1989 did you change your</p>	<p style="text-align: right;">13</p> <p>1 A. I went to public health school.</p> <p>2 Q. All right. And you were there for nine</p> <p>3 months getting your MPH?</p> <p>4 A. Correct.</p> <p>5 Q. After you completed your MPH, what did</p> <p>6 you do next?</p> <p>7 A. I went back to Braintree Medical</p> <p>8 Associates, and I started working corporately for</p> <p>9 Blue Cross/Blue Shield.</p> <p>10 Q. Now, you referred to it earlier as</p> <p>11 Medical East in Braintree and now as Braintree</p> <p>12 Medical Associates. Is that the same entity or</p> <p>13 different entities?</p> <p>14 A. Same entity.</p> <p>15 Q. And you came back now to work not as a</p> <p>16 physician but in another capacity?</p> <p>17 A. I worked at Braintree Medical</p> <p>18 Associates. I worked as a physician part time,</p> <p>19 and then I worked for the corporate Blue</p> <p>20 Cross/Blue Shield Massachusetts part time.</p> <p>21 Q. For the part of the time when you were</p> <p>22 working as a physician, what sort of medicine were</p>

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<p style="text-align: right;">14</p> <p>1 you practicing then?</p> <p>2 A. Braintree Medical Associates -- I was</p> <p>3 practicing urgent care, and I was to an extent</p> <p>4 during the practice essentially seeing people for</p> <p>5 physicals and any kind of urgent care problems.</p> <p>6 Q. And, again, you were a salaried</p> <p>7 employee?</p> <p>8 A. Correct.</p> <p>9 Q. So for a period of time you were wearing</p> <p>10 two hats or working in two different capacities;</p> <p>11 is that correct?</p> <p>12 A. Uh-huh. Uh-huh.</p> <p>13 Q: Okay. And just a reminder, you have to</p> <p>14 answer --</p> <p>15 A. Oh, sorry.</p> <p>16 Q. -- verbally.</p> <p>17 A. Sorry. Yes.</p> <p>18 Q. The answer was yes?</p> <p>19 A. Yes.</p> <p>20 Q. How long did you keep working at those</p> <p>21 two different positions?</p> <p>22 A. Until 1995. I was at Braintree Medical</p>	<p style="text-align: right;">16</p> <p>1 practicing as a physician. After that, is the</p> <p>2 next period of time when you practiced medicine in</p> <p>3 the '97 time period?</p> <p>4 A. Clinical medicine, correct.</p> <p>5 Q. Okay. And how long were you in the</p> <p>6 position you described in 1997?</p> <p>7 A. Until 1999.</p> <p>8 Q. And I'm sorry, you mentioned that</p> <p>9 before, but could you tell me what that position</p> <p>10 was?</p> <p>11 A. Medical director of the Mind/Body</p> <p>12 Medical Institute.</p> <p>13 Q. What is the Mind/Body Medical Institute?</p> <p>14 A. It's a not-for-profit institute devoted</p> <p>15 to the advancement of mind/body medicine.</p> <p>16 Q. Where is that based?</p> <p>17 A. Boston.</p> <p>18 Q. And what sort of medicine were you</p> <p>19 practicing at the Mind/Body Institute?</p> <p>20 A. Internal medicine.</p> <p>21 Q. Were you a salaried employee?</p> <p>22 A. Correct.</p>
<p style="text-align: right;">15</p> <p>1 Associates until 1995. I think -- I don't quite</p> <p>2 remember. I think it was the early part of the</p> <p>3 year I quit working there.</p> <p>4 Q. After 1995 have you worked exclusively</p> <p>5 on the corporate side?</p> <p>6 A. No. In 1997 I worked as medical</p> <p>7 director for the Mind Body Medical Institute in</p> <p>8 Boston.</p> <p>9 Q. Okay. Well, let's back up a minute</p> <p>10 then. Going back to the period from 1993 to 1995,</p> <p>11 what work were you doing or what was your title in</p> <p>12 relation to the corporate role you were</p> <p>13 fulfilling?</p> <p>14 A. I was the medical director of clinical</p> <p>15 design. I believe that was my title. I've had a</p> <p>16 lot of different titles --</p> <p>17 Q. Sure.</p> <p>18 A. -- but I believe that was the title.</p> <p>19 Q. Okay. Now, let me follow through first</p> <p>20 on your -- on the physician side of both of your</p> <p>21 experiences.</p> <p>22 From '93 to '95 you were part time</p>	<p style="text-align: right;">17</p> <p>1 Q. After -- well, in 1999 did you change</p> <p>2 employers or positions?</p> <p>3 A. I changed positions at Blue Cross/Blue</p> <p>4 Shield of Massachusetts.</p> <p>5 Q. Now, is the Mind/Body Medical Institute</p> <p>6 part of or affiliated with Blue Cross/Blue Shield</p> <p>7 of Massachusetts?</p> <p>8 A. No.</p> <p>9 Q. So from '97 to '99 you were not involved</p> <p>10 or affiliated with BC/BS of Massachusetts, right?</p> <p>11 A. I was.</p> <p>12 Q. Okay.</p> <p>13 A. I was part time at Blue Cross/Blue</p> <p>14 Shield of Massachusetts. I was part time at the</p> <p>15 Mind/Body Medical Institute.</p> <p>16 Q. I see. So the medical director position</p> <p>17 at the Mind/Body Medical Institute was a part-time</p> <p>18 position?</p> <p>19 A. Correct.</p> <p>20 Q. And you completed that -- you finished</p> <p>21 working there in 1999?</p> <p>22 A. As a medical director.</p>



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<p style="text-align: right;">18</p> <p>1 Q. Right. Okay. Now, after that did you</p> <p>2 practice clinical medicine again at any point?</p> <p>3 A. No.</p> <p>4 Q. Okay. So in terms of the practice of</p> <p>5 medicine, you had a residency followed by a period</p> <p>6 at the Missouri Baptist Hospital, and then you</p> <p>7 worked for Medical East, and then you had your</p> <p>8 stint at the Mind/Body Medical Institute, correct?</p> <p>9 A. Correct.</p> <p>10 MR. COCO: Objection.</p> <p>11 Q. Now, in any of those positions or with</p> <p>12 any of those companies were you involved in the</p> <p>13 purchasing of prescription drugs?</p> <p>14 A. No.</p> <p>15 Q. Now, I assume in some of those positions</p> <p>16 you did administer injectable or infused drugs to</p> <p>17 patients; is that correct?</p> <p>18 A. No.</p> <p>19 Q. Even as a primary care physician?</p> <p>20 A. I don't believe so.</p> <p>21 Q. Okay. Did you have, at that time, any</p> <p>22 information as to how your employers acquired</p>	<p style="text-align: right;">20</p> <p>1 A. Helping the company come up with a</p> <p>2 policy for establishing clinical guidelines for</p> <p>3 its clinical network.</p> <p>4 Q. Now, did the clinical guidelines pertain</p> <p>5 to standards in physician care, choice of</p> <p>6 prescription drugs? What sort of specific areas</p> <p>7 did it cover?</p> <p>8 A. Standards in physician care.</p> <p>9 Q. And what sort of standards are you</p> <p>10 talking about there?</p> <p>11 A. Preventive standards, paps, mammograms,</p> <p>12 things like that.</p> <p>13 Q. Okay. Now, at that time you were</p> <p>14 working for Medical East or Braintree Medical</p> <p>15 Associates, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. What was that entity, or what is</p> <p>18 that entity?</p> <p>19 A. I don't understand.</p> <p>20 Q. Well, is it a physician practice? Is it</p> <p>21 a hospital? What is it?</p> <p>22 A. It was a staff model HMO owned by Blue</p>
<p style="text-align: right;">19</p> <p>1 drugs?</p> <p>2 A. No.</p> <p>3 MR. COCO: Objection.</p> <p>4 Q. Did you have any information as to the</p> <p>5 prices or rates at which any of those employers</p> <p>6 acquired drugs?</p> <p>7 MR. COCO: Objection.</p> <p>8 Q. You can answer.</p> <p>9 A. No.</p> <p>10 Q. Now I would like to turn to your work on</p> <p>11 the corporate side that we've been talking about.</p> <p>12 In 1993 you started working on the corporate side</p> <p>13 for the first time in a part- time position;</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, your title then was the medical</p> <p>17 director of clinical design?</p> <p>18 A. I believe so.</p> <p>19 Q. Okay. What were your responsibilities</p> <p>20 in that position?</p> <p>21 A. Clinical guideline development.</p> <p>22 Q. What does that mean?</p>	<p style="text-align: right;">21</p> <p>1 Cross/Blue Shield of Massachusetts.</p> <p>2 Q. Now, in 1995 your position changed; is</p> <p>3 that correct?</p> <p>4 A. It could have. I was still clinically</p> <p>5 and corporately working for Blue Cross/Blue Shield</p> <p>6 of Massachusetts. I can't quite remember if I had</p> <p>7 a job change at that particular time.</p> <p>8 Q. Okay. Did you remain at Braintree</p> <p>9 Medical Associates post-1995?</p> <p>10 A. No.</p> <p>11 Q. Who did you go to work for in 1995,</p> <p>12 which entity?</p> <p>13 A. I was still at Blue Cross/Blue Shield of</p> <p>14 Massachusetts corporately. I've been with Blue</p> <p>15 Cross/Blue Shield of Massachusetts corporately</p> <p>16 part time since 1993.</p> <p>17 Q. Now, when you were work at Braintree</p> <p>18 Medical Associates you were based, I assume, at a</p> <p>19 facility in Braintree?</p> <p>20 A. Correct.</p> <p>21 Q. Did you move to a different facility in</p> <p>22 1995?</p>

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<p style="text-align: right;">22</p> <p>1 A. No. I was still -- I still had my 2 corporate office at Blue Cross/Blue Shield. I was 3 just not working at Braintree Medical Associates 4 anymore. 5 Q. Okay. What sort of work did you do post 6 1995 even if you do not recall the specific title? 7 A. You mean at Blue Cross/Blue Shield of 8 Massachusetts? 9 Q. Right. 10 A. I worked in the clinical quality 11 department, and I did a variety of things. I 12 worked in charge of corporate credentialing. I 13 supervised a variety of different areas, clinical 14 areas. 15 Q. How long did you -- were those your job 16 responsibilities? 17 A. Well, it varied for each one. 18 Q. Okay. Well, let me ask you this: From 19 1995 up until 1997 -- 20 A. Okay. 21 Q. -- do you know whether you had one title 22 or was it many titles?</p>	<p style="text-align: right;">24</p> <p>1 Q. By professional providers, are you 2 referring to physicians? 3 A. Physicians, nurse practitioners, 4 chiropractors, et cetera. 5 Q. And what were your responsibilities in 6 terms of checking their credentials? What sort of 7 credentials were you looking at? 8 A. Licensure, malpractice history, site of 9 employment, things like that. 10 Q. Other than corporate credentialing, did 11 you have any other responsibilities in that time 12 period? 13 A. Isn't it terrible not to remember this 14 stuff? At one point in time in there I was a 15 supervisor of provider audit. I think between the 16 quality, the credentialing and provider audit, 17 that pretty much covers that time frame. I may be 18 forgetting something, but... 19 Q. Now, let's talk about the provider audit 20 role. What were you auditing? 21 A. I was supervising a group of nurses who 22 were doing hospital audits.</p>
<p style="text-align: right;">23</p> <p>1 A. I could have had a couple of titles. 2 Q. For that period, '95 to '97, were you 3 full time or part time? 4 A. Part time. 5 Q. Okay. What were you doing the remainder 6 of the time, if anything? 7 A. I have three children. 8 Q. Fair enough. 9 A. I had a son at that point in time. 10 Q. Okay. Now, for that period you 11 mentioned clinical -- you were in the clinical 12 quality department. 13 A. Correct. 14 Q. One aspect of that was corporate 15 credentialing? 16 A. (No verbal response.) 17 Q. Is that correct? 18 A. Yes. 19 Q. What is corporate credentialing? 20 A. It was credentialing professional 21 providers that are in the Blue Cross/Blue Shield 22 of Massachusetts managed care networks.</p>	<p style="text-align: right;">25</p> <p>1 Q. And what were they auditing? 2 A. Hospital cases. 3 Q. Can you describe for me a typical audit? 4 I mean, were they checking clinical procedures, 5 claim forms? What exactly was being examined? 6 A. They were checking medical records to 7 see if they were consistent with coding. 8 Q. So could one example be checking medical 9 records to see what drugs were administered and 10 matching that up against a claim form seeking 11 reimbursement in relation to a drug? 12 A. No. 13 Q. Okay. 14 A. We were auditing DRG payments. 15 Q. Okay. So since the DRG encompasses the 16 entire stay, they would be checking to ensure that 17 the ailment and the patient's condition and the 18 code assigned to it was consistent with the 19 amounts that were billed and reimbursed by Blue 20 Cross/Blue Shield of Massachusetts; is that 21 correct? 22 MR. COCO: Objection. They were</p>

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<p style="text-align: right;">26</p> <p>1 auditing the coding of the hospital admission 2 against the medical record. 3 Q. To ensure that they were consistent? 4 A. Correct. 5 Q. Anything else involved in the audit? 6 A. Not that I'm aware of, or can remember. 7 Q. Did any part of the audit process 8 examine financials of the hospital or the provider 9 in relation to drug acquisition? 10 A. No. 11 Q. Now, in 1997 you started working for a 12 period of time at the Mind/Body Medical Institute? 13 A. Correct. 14 Q. While you were working there were you 15 also working anywhere else? 16 A. Blue Cross/Blue Shield of Massachusetts. 17 Q. Now, your Mind Body Medical Institute 18 position was part time, correct? 19 A. Correct. 20 Q. What were you doing for BC/BS of 21 Massachusetts the rest of the time? 22 A. 1997, I was in charge of a position</p>	<p style="text-align: right;">28</p> <p>1 A. Sometimes. 2 Q. So the issue was whether to allow a 3 procedure to take place or whether or not to make 4 payment in relation to a procedure that had taken 5 place; is that a fair statement? 6 A. I believe so. 7 Q. How many physicians worked in the 8 physician review unit? 9 A. I would say -- and I'm guessing. I 10 can't remember. I would say about 10. They were 11 all part time. 12 Q. Now let me ask you that question more 13 generally: Do you have a sense for how many MDs 14 work in or for Blue Cross/Blue Shield of 15 Massachusetts at the present time? 16 A. I have a sense. 17 Q. Okay. 18 A. I would say less than 20, full and part 19 time. 20 Q. Okay. What areas do those MDs work in? 21 A. The physician review unit, the behavior 22 health unit, regional medical director supporting</p>
<p style="text-align: right;">27</p> <p>1 review unit at Blue Cross/Blue Shield of 2 Massachusetts. 3 Q. And how long did you remain in charge of 4 the physician review unit? 5 A. Until 1999. 6 Q. What were your responsibilities in that 7 position? 8 A. Supervising the physicians who worked in 9 that unit. 10 Q. Okay. What did the physicians in that 11 unit do? 12 A. They're responsible for denying any 13 clinical activity like hospitalization or 14 outpatient surgery. 15 Q. When you say "they're responsible for 16 denying clinical activity," are these procedures 17 that were subject to pre-authorization? 18 A. Sometimes. 19 Q. And in cases where the procedure -- were 20 they cases where the procedure had already been 21 performed before the claim was brought to the 22 attention of the physician review unit?</p>	<p style="text-align: right;">29</p> <p>1 contracting, quality medical directors working in 2 the quality department, medical director 3 supporting disease management, medical director 4 supporting corporate account analysis. 5 Q. Anything else? 6 A. There -- yeah, I mean, that's -- I may 7 be missing one or two, but... 8 Q. Okay. Now, one of the categories you 9 mentioned was medical director supporting 10 corporate account analysis? 11 A. Correct. 12 Q. What does that department do? 13 A. That's a relatively new position, and it 14 supports account reporting, so when we go out to 15 make sales, sometimes a physician will go out to 16 talk about the experience, you know, if it's a 17 resale or experience that account has had in terms 18 of claims history with our company. Sometimes if 19 a new sale, they just talk about general 20 activities we do in medical management. 21 Q. Are any of the physicians employed by 22 Blue Cross/Blue Shield of Massachusetts, to your</p>



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<p style="text-align: right;">30</p> <p>1 knowledge, oncologists?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Any rheumatologists?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know whether any of the doctors</p> <p>6 employed by Blue Cross/Blue Shield of</p> <p>7 Massachusetts have had personal experience buying</p> <p>8 and billing for drugs when practicing medicine?</p> <p>9 A. I don't know.</p> <p>10 Q. And just so the record is clear, do you</p> <p>11 have an understanding as to what I mean when I use</p> <p>12 the term "buying and billing"?</p> <p>13 A. Explain.</p> <p>14 Q. So you understand I'm referring to a</p> <p>15 situation where a physician will acquire a drug,</p> <p>16 administer it to a patient and then seek</p> <p>17 reimbursement from a payer; correct?</p> <p>18 A. Okay. Correct.</p> <p>19 Q. So you described now your work in the</p> <p>20 physician review unit from '97 to '99. After --</p> <p>21 or, rather, in 1999, did you start working in</p> <p>22 different areas?</p>	<p style="text-align: right;">32</p> <p>1 director of clinical coordination, how long did</p> <p>2 you hold that position?</p> <p>3 A. For a year.</p> <p>4 Q. And that was for BC/BS of Massachusetts;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And what were your responsibilities in</p> <p>8 the first position of medical director of clinical</p> <p>9 coordination?</p> <p>10 A. To oversee the case management, disease</p> <p>11 management area, to oversee the physician review,</p> <p>12 utilization management areas.</p> <p>13 Q. In that role did you get involved in</p> <p>14 issues pertaining to reimbursement?</p> <p>15 MR. COCO: Objection.</p> <p>16 A. Not directly.</p> <p>17 Q. When you say "not directly," was there</p> <p>18 something indirect that you were thinking of?</p> <p>19 A. When we were talking about the physician</p> <p>20 review unit who could deny payment --</p> <p>21 Q. Right.</p> <p>22 A. -- and that's what I meant in that</p>
<p style="text-align: right;">31</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And what areas did you move to in</p> <p>3 1999?</p> <p>4 A. I was medical director of clinical</p> <p>5 coordination.</p> <p>6 Q. Was that a full-time or a part-time</p> <p>7 position?</p> <p>8 A. Part-time.</p> <p>9 Q. Were you working in any other positions</p> <p>10 while doing that?</p> <p>11 A. The Mind/Body Medical Institute.</p> <p>12 Q. Now, when did you start work at the</p> <p>13 Mind/ Body Medical Institute?</p> <p>14 A. I believe 2000.</p> <p>15 Q. Did your title there change in 1999?</p> <p>16 A. Correct.</p> <p>17 Q. What did your title become in 1999?</p> <p>18 A. I think I was -- I think the title was</p> <p>19 reimbursement specialist.</p> <p>20 Q. Now, you were a reimbursement specialist</p> <p>21 at the Mind/Body Institute from '99 to 2000. And</p> <p>22 the other position that you had as medical</p>	<p style="text-align: right;">33</p> <p>1 sense.</p> <p>2 Q. Now, in terms of your other position at</p> <p>3 that time as a reimbursement specialist at the</p> <p>4 Mind/Body Institute, what were your</p> <p>5 responsibilities in that position?</p> <p>6 A. Basically helping the group understand</p> <p>7 how they could organize their activities and</p> <p>8 helping them to come in compliance with the CMS</p> <p>9 kind of charting activities --</p> <p>10 Q. Okay.</p> <p>11 A. -- medical recordkeeping sort of things,</p> <p>12 medical record documentation.</p> <p>13 Q. Now, when you say "help the group," what</p> <p>14 group are you referring to?</p> <p>15 A. The Mind/Body medical group, clinical</p> <p>16 group.</p> <p>17 Q. So you were helping the clinical group</p> <p>18 at the institute --</p> <p>19 A. Yeah.</p> <p>20 Q. -- in terms of their recordkeeping</p> <p>21 procedures?</p> <p>22 A. Correct.</p>

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<p style="text-align: right;">34</p> <p>1 Q. Now, in 2000 what positions did you move 2 to?</p> <p>3 A. Quality medical director, Blue 4 Cross/Blue Shield of Massachusetts.</p> <p>5 Q. Was that a part-time position also?</p> <p>6 A. Correct.</p> <p>7 Q. Were you working anywhere else at that 8 time?</p> <p>9 A. No.</p> <p>10 Q. And how long did you remain the quality 11 medical director?</p> <p>12 A. For a year.</p> <p>13 Q. And how about in that position, what 14 responsibilities did you have?</p> <p>15 A. Responsible for the clinical quality 16 department, Blue Cross/Blue Shield of 17 Massachusetts.</p> <p>18 Q. What does the clinical quality 19 department do?</p> <p>20 A. Design programs to help the company 21 become in compliance with NCQA accreditation, the 22 URAC accreditation.</p>	<p style="text-align: right;">36</p> <p>1 that position?</p> <p>2 A. To support provider contracting, 3 provider services at Blue Cross/Blue Shield of 4 Massachusetts, and initially in the northern part 5 of the state.</p> <p>6 Q. How long did you hold that position?</p> <p>7 A. I'm still in that position.</p> <p>8 Q. Your title has not changed?</p> <p>9 A. Not really, no. Regional medical 10 director.</p> <p>11 Q. Have the areas of the country for which 12 you have responsibility changed?</p> <p>13 A. Correct. So I'm now responsible for the 14 central and western part of the state.</p> <p>15 Q. When did that change occur?</p> <p>16 A. I think 2002, 2003. I'm not quite -- I 17 don't quite remember when exactly.</p> <p>18 Q. And you've been employed in that 19 position continuously from 2001 till the present 20 time?</p> <p>21 A. Correct.</p> <p>22 Q. Are you still a part-time employee?</p>
<p style="text-align: right;">35</p> <p>1 Q. What is NCQA?</p> <p>2 A. National Committee for Quality 3 Assurance.</p> <p>4 Q. Is this a position related to 5 credentialing?</p> <p>6 A. No. Credentialing is one of the 7 standard -- but this was more managed care 8 organizations. It's sort of like the good seal 9 of, you know, housekeeping -- showing my age -- of 10 approval but it's like our J codes for hospitals, 11 joint commission for hospitals. It's essentially 12 our accreditation by that says that the managed 13 care company was doing everything they should, and 14 I was responsible for the elements related to 15 clinical quality.</p> <p>16 Q. So that brings us up to about 2001; 17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. What position did you move to at that 20 time?</p> <p>21 A. Regional medical director.</p> <p>22 Q. Now, what were your responsibilities in</p>	<p style="text-align: right;">37</p> <p>1 A. Correct.</p> <p>2 Q. And you've been part time throughout 3 that period of time?</p> <p>4 A. Correct.</p> <p>5 Q. But throughout that period of time this 6 is the only position you've been working in, you 7 haven't also had another job; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Let me show you a document, and we'll 10 mark this as Exhibit Cook 001?</p> <p>11 (Exhibit Cook 001, Document Bates- 12 numbered BCBSMA-AWP-12120 - 12146, marked for 13 identification.)</p> <p>14 Q. Now, if you could turn to the second 15 page of that document, which is the BC/BS 16 organization page?</p> <p>17 A. Okay.</p> <p>18 Q. Is this the current -- does this reflect 19 the current structure of the organization?</p> <p>20 A. No.</p> <p>21 Q. Okay. How has the organization changed?</p> <p>22 A. Well, the chairman and chief executive</p>

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<p style="text-align: right;">38</p> <p>1 officer is no longer William Van Faasen.</p> <p>2 Q. Okay. Who is the current CEO?</p> <p>3 A. Cleve Killingsworth.</p> <p>4 Q. Okay.</p> <p>5 A. And in general, I'm not really sure</p> <p>6 exactly -- there isn't a chief operating officer</p> <p>7 anymore, and I'm not really sure who reports</p> <p>8 exactly directly to Mr. Killingsworth.</p> <p>9 Q. Now, what is the BCBSMA Foundation?</p> <p>10 A. It's a not-for-profit foundation</p> <p>11 dedicated to improving healthcare access to the</p> <p>12 people of Massachusetts.</p> <p>13 Q. Now, how long has Mr. Killingsworth been</p> <p>14 the CEO of the company?</p> <p>15 A. Since the middle of the -- I think it</p> <p>16 was 2004, say June 2004.</p> <p>17 Q. And Mr. Van Faasen, how long was he the</p> <p>18 CEO before Mr. Killingsworth?</p> <p>19 A. I believe at least 10 years.</p> <p>20 Q. Now, Mr. Killingsworth, is his</p> <p>21 background in the health insurance industry?</p> <p>22 A. I believe so.</p>	<p style="text-align: right;">40</p> <p>1 A. No.</p> <p>2 Q. Is she retired?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know whether she's working</p> <p>5 anywhere else at the moment?</p> <p>6 A. No.</p> <p>7 Q. By the way, Mr. Van Faasen, is he also</p> <p>8 retired?</p> <p>9 A. From Blue Cross in that capacity, yes.</p> <p>10 He's the chairman of the board.</p> <p>11 Q. Now, are you aware whether or not Ms.</p> <p>12 Smith played a role in relation to the staff model</p> <p>13 HMO that BC/BS of Massachusetts used to have?</p> <p>14 A. I believe so.</p> <p>15 Q. What's your understanding of the role</p> <p>16 she played in relation to the staff model?</p> <p>17 A. I'm not 100 percent sure exactly what</p> <p>18 she did. She was responsible, I believe, for</p> <p>19 helping to develop HMO Blue, so I don't know what</p> <p>20 their direct responsibilities -- and since that</p> <p>21 was HMO Blue, that managed care model came -- that</p> <p>22 staff model HMO came up under that. I'm assuming</p>
<p style="text-align: right;">39</p> <p>1 Q. Do you know how long he's worked at Blue</p> <p>2 Cross/Blue Shield of Massachusetts?</p> <p>3 A. I believe since sometime in 2003.</p> <p>4 Q. Do you know where he worked prior to</p> <p>5 coming to BC/BS?</p> <p>6 A. I should, but I can't remember.</p> <p>7 Midwest.</p> <p>8 Q. Is that a health plan?</p> <p>9 A. I believe so, at the time he was working</p> <p>10 at health -- in a health plan, yes.</p> <p>11 Q. Now, if you could turn to the next page,</p> <p>12 please, which is headed "COO Organization."</p> <p>13 A. Uh-huh.</p> <p>14 Q. Towards the left of the page is an entry</p> <p>15 for Sharon Smith. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether Ms. Smith is still</p> <p>18 in that position?</p> <p>19 A. She's not.</p> <p>20 Q. What is Ms. Smith's current position?</p> <p>21 A. At Blue Cross?</p> <p>22 Q. Is she still at Blue Cross?</p>	<p style="text-align: right;">41</p> <p>1 she had some relationship, but I don't know</p> <p>2 exactly what she did.</p> <p>3 Q. Now, help me understand. What is the</p> <p>4 relationship between HMO Blue and the staff model</p> <p>5 HMO?</p> <p>6 A. They both came up at about the same</p> <p>7 point in time.</p> <p>8 Q. Now, is HMO Blue a product, or is it a -</p> <p>9 - or is it something else?</p> <p>10 A. It's a product, and it may be</p> <p>11 corporately some sort of separate entity, which I</p> <p>12 don't quite -- I can't quite tell you that.</p> <p>13 Q. Okay. What I'm trying to understand is</p> <p>14 was HMO a type of health plan or a type of health</p> <p>15 insurance product?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And did people who had health</p> <p>18 coverage through HMO Blue, did they receive their</p> <p>19 treatment at the staff model HMO?</p> <p>20 A. Not exclusively.</p> <p>21 Q. That was one of the potential sites of</p> <p>22 care?</p>

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<p style="text-align: right;">42</p> <p>1 A. Yes.</p> <p>2 Q. Are there any other links between HMO</p> <p>3 Blue and the staff model HMO?</p> <p>4 A. Not that I know of.</p> <p>5 Q. Were there other BC/BS of Massachusetts</p> <p>6 health insurance products whose members also got</p> <p>7 treatment at the staff model clinics?</p> <p>8 A. I believe so.</p> <p>9 Q. Now, for what period of time did BC/BS</p> <p>10 of Massachusetts have a staff model HMO?</p> <p>11 A. That, I don't know.</p> <p>12 Q. Do you know when it ceased to exist or</p> <p>13 when BC/BS of Massachusetts ceased to own it?</p> <p>14 A. Sometime in the '90s, mid-'90s --</p> <p>15 Q. All right.</p> <p>16 A. -- late '90s.</p> <p>17 Q. Now, if I could ask you to turn to -- do</p> <p>18 you see at the bottom right of the pages there is</p> <p>19 a stamp? We call it Bates number. Turn to the</p> <p>20 page numbered 12137, please. Let me know when</p> <p>21 you're there.</p> <p>22 A. 12137.</p>	<p style="text-align: right;">44</p> <p>1 physician executive?</p> <p>2 A. He's responsible for the oversight of</p> <p>3 the clinical part of the -- well, good question.</p> <p>4 He provides oversight currently to the physicians</p> <p>5 that work at Blue Cross/Blue Shield of</p> <p>6 Massachusetts.</p> <p>7 Q. Now, when you say "oversees the</p> <p>8 physicians working at BC/BS," are those the group</p> <p>9 of approximately 20 physicians we spoke about</p> <p>10 earlier?</p> <p>11 A. Correct. Except for Dr. Robert Mandel.</p> <p>12 Q. Okay. Now, I got the impression that</p> <p>13 those 20 physicians worked in a number of</p> <p>14 different areas; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. But Dr. Fallon somehow has</p> <p>17 responsibility for all of them; is that accurate?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So he oversees the work of all of</p> <p>20 those physicians in the different capacities that</p> <p>21 they work in?</p> <p>22 A. They report up to him. It's a reporting</p>
<p style="text-align: right;">43</p> <p>1 Q. It's a page entitled "Health Care</p> <p>2 Services Organization."</p> <p>3 A. Yes. I'm there.</p> <p>4 Q. Now, at the bottom right of that page is</p> <p>5 a date stamp February of 2004. Now, at the far</p> <p>6 left the chief medical officer is John Fallon.</p> <p>7 He's no longer at the company; is that correct?</p> <p>8 A. He's still at the company.</p> <p>9 Q. Oh, he's still at the company?</p> <p>10 A. (No verbal response.)</p> <p>11 Q. Is he in a different position?</p> <p>12 A. He's the chief physician executive.</p> <p>13 That's how I sense the position. This isn't -- I</p> <p>14 guess you could call him the chief medical officer</p> <p>15 but I think his official title has always been</p> <p>16 chief physician executive.</p> <p>17 Q. Do you know what kind of a doctor Mr.</p> <p>18 Fallon is --</p> <p>19 A. An internist.</p> <p>20 Q. -- or Dr. Fallon? Sorry.</p> <p>21 A. That's okay.</p> <p>22 Q. What are the responsibilities as a chief</p>	<p style="text-align: right;">45</p> <p>1 relationship.</p> <p>2 Q. Now, you said all the physicians except</p> <p>3 for Dr. Mandel?</p> <p>4 A. Correct.</p> <p>5 Q. What does Dr. Mandel do?</p> <p>6 A. He's in charge of our community</p> <p>7 transformation initiative.</p> <p>8 Q. We'll come to that a little bit later.</p> <p>9 Sticking with this chart for the moment another</p> <p>10 entry there is for Mr. Vincent Plourde who works</p> <p>11 in provider service?</p> <p>12 A. Correct.</p> <p>13 Q. Is he still in that position?</p> <p>14 A. Yes.</p> <p>15 Q. And what does the provider service</p> <p>16 division do?</p> <p>17 A. He's responsible for overseeing the</p> <p>18 provider service area which is responsible for</p> <p>19 dealing with provider inquiries and also the</p> <p>20 provider managers who go out into the field and</p> <p>21 work with physicians. And he may have other</p> <p>22 responsibilities of which I'm unaware.</p>

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<p style="text-align: right;">46</p> <p>1 Q. Now, when you say "provider inquiries,"</p> <p>2 what are you referring to there?</p> <p>3 A. Why this billed and pay, why is that? I</p> <p>4 want to know how to do X, Y and Z, anything that</p> <p>5 would have to do with a physician inquiry to</p> <p>6 our...</p> <p>7 Q. Now, if a physician had a complaint</p> <p>8 relating to the amount of reimbursement they were</p> <p>9 receiving, would that be directed to Mr. Plourde's</p> <p>10 group?</p> <p>11 A. It could be.</p> <p>12 Q. Where else could that complaint be</p> <p>13 directed?</p> <p>14 A. Directed to the regional medical</p> <p>15 directors.</p> <p>16 Q. That's your position, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Anywhere else?</p> <p>19 A. Yes, but a lot of times it gets directed</p> <p>20 to whoever, you know, people sent letters to et</p> <p>21 cetera, but -- so anywhere could hear about it,</p> <p>22 but the majority of the time it would be provider</p>	<p style="text-align: right;">48</p> <p>1 about there?</p> <p>2 A. Disease management. I'm also -- they</p> <p>3 may have been responsible for our PBM -- I'm not</p> <p>4 sure -- contract.</p> <p>5 Q. Did the contracted health services</p> <p>6 department have any role in contracting with</p> <p>7 physicians?</p> <p>8 A. No.</p> <p>9 Q. Now, if you could turn the page to Page</p> <p>10 12138, which is entitled "Chief Medical Office,"</p> <p>11 now, this is your department, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Now, this chart is again from Feb. of</p> <p>14 '04. How has that structure changed, if at all?</p> <p>15 A. A lot. John Fallon is listed -- as the</p> <p>16 chief physician executive, he reports to Mr.</p> <p>17 Killingsworth directly. I'm not the medical</p> <p>18 director of the south. I've never been the</p> <p>19 medical director of the south. And -- I'm central</p> <p>20 west. Dr. Zallen is the medical director for the</p> <p>21 north.</p> <p>22 Q. What sort of a doctor is Dr. Zallen?</p>
<p style="text-align: right;">47</p> <p>1 services or the regional medical directors.</p> <p>2 Q. And if someone else were to receive a</p> <p>3 complaint, would they then direct it to either</p> <p>4 provider services or a medical director for</p> <p>5 further attention?</p> <p>6 A. Usually.</p> <p>7 Q. Okay. Now, there's also an entry here</p> <p>8 for contracted health services for which Kim Olson</p> <p>9 is the vice president. Is that a Mr. or a Ms.?</p> <p>10 A. Ms.</p> <p>11 Q. Now, what does the contracted health</p> <p>12 services department do?</p> <p>13 A. She's no longer in that role.</p> <p>14 Q. Okay. Who is in that role now; do you</p> <p>15 know?</p> <p>16 A. No, I don't exactly. I'm not even sure</p> <p>17 that exactly exists anymore.</p> <p>18 Q. Do you know what that department did do?</p> <p>19 A. I think they were responsible for</p> <p>20 contracting our vendor -- some of our vendor</p> <p>21 relationships.</p> <p>22 Q. What sort of vendors are you talking</p>	<p style="text-align: right;">49</p> <p>1 A. Pediatrician.</p> <p>2 Q. Did he practice pediatrics?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know what settings he practiced</p> <p>5 in?</p> <p>6 A. Pardon?</p> <p>7 Q. Do you know whether he practiced in a</p> <p>8 hospital or in a private practice?</p> <p>9 A. I believe he's practiced in a hospital,</p> <p>10 and he practiced in a staff model HMO.</p> <p>11 Q. Okay.</p> <p>12 A. And I don't know what else he did.</p> <p>13 Q. Okay.</p> <p>14 A. I think he practiced in other sites too.</p> <p>15 Q. Any other changes to the structure?</p> <p>16 A. Dr. Kleinman is no longer there.</p> <p>17 Q. Who has replaced Dr. Kleinman?</p> <p>18 A. Dr. Jeff Simmons.</p> <p>19 Q. What sort of a doctor is Dr. Simmons?</p> <p>20 A. He's a psychiatrist. It's Jeffrey</p> <p>21 Simmons. Did I say Robert? Jeffrey Simmons.</p> <p>22 Q. Okay.</p>



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<p style="text-align: right;">50</p> <p>1 A. And also in the current model David</p> <p>2 Brumley reports to John Fallon directly. He's the</p> <p>3 medical director in charge of disease management.</p> <p>4 Q. Is he also a medical doctor?</p> <p>5 A. Yes.</p> <p>6 Q. What sort of doctor is he?</p> <p>7 A. Family practitioner.</p> <p>8 Q. Okay.</p> <p>9 A. Karen Boudreau, and she's a family</p> <p>10 practitioner, and she reports to him. She's the</p> <p>11 medical director of quality.</p> <p>12 Q. Okay.</p> <p>13 A. Dr. Tom Hawkins. -- these are all on a</p> <p>14 direct line -- he's the medical director of</p> <p>15 informatics and account reporting.</p> <p>16 Q. What sort of doctor is he?</p> <p>17 A. I think he's an internist. I'm not 100</p> <p>18 percent sure on that.</p> <p>19 Q. Okay.</p> <p>20 A. And let's see. Who am I forgetting?</p> <p>21 And Dr. Lee Steingisser.</p> <p>22 Q. What sort of doctor is that?</p>	<p style="text-align: right;">52</p> <p>1 beds do they have, that kind of thing.</p> <p>2 Q. So it's an information repository about</p> <p>3 the entities that you're dealing with?</p> <p>4 A. Yes. Hospitals right now, just</p> <p>5 hospitals. And let's see if I forgot -- how many</p> <p>6 do you have now?</p> <p>7 Q. A fair enough. What about Dr. Goldbach,</p> <p>8 is he still there?</p> <p>9 A. He's still there and he's the regional</p> <p>10 director of the south.</p> <p>11 Q. And what sort of doctor is Dr. Goldbach?</p> <p>12 A. Pulmonologist.</p> <p>13 Q. Do you know whether he practiced in a</p> <p>14 physician office setting at any point?</p> <p>15 A. He may have. I'm not sure.</p> <p>16 Q. By the way, are you aware of a more</p> <p>17 recent organizational chart?</p> <p>18 A. Not offhand. Blue Cross/Blue Shield</p> <p>19 isn't really great at organizational charts, so</p> <p>20 there may be one. We don't usually circulate them</p> <p>21 very much, and this is old.</p> <p>22 Q. Okay.</p>
<p style="text-align: right;">51</p> <p>1 A. He's an internist. He's the medical</p> <p>2 director of medical policy administration.</p> <p>3 Q. Okay.</p> <p>4 A. And Andreas Mang, who is the director of</p> <p>5 something called Blue Compass.</p> <p>6 Q. Blue Compass?</p> <p>7 A. Yeah.</p> <p>8 Q. What is Blue Compass?</p> <p>9 A. It's a reporting system that we're</p> <p>10 working on, provider reporting kind of</p> <p>11 methodology.</p> <p>12 Q. Okay. What do you mean when you refer</p> <p>13 to a "provider reporting"?</p> <p>14 A. Reports that look at the activities of</p> <p>15 our providers. It's in development.</p> <p>16 Q. Well, activities of providers, what are</p> <p>17 you referring to there?</p> <p>18 A. Hospital providers. It collects -- he's</p> <p>19 working on a software system that sort of collects</p> <p>20 what we know around the company about hospitals</p> <p>21 that we contract with, like are they accredited,</p> <p>22 how do they do on their accreditation, how many</p>	<p style="text-align: right;">53</p> <p>1 A. So there should be about eight people</p> <p>2 reporting to him, seven or eight, to Dr. Fallon.</p> <p>3 Q. Does Dr. Fallon have any</p> <p>4 responsibilities at present other than the</p> <p>5 supervisory role in relation to all the physicians</p> <p>6 that work at the company?</p> <p>7 A. Well, he's the chief physician</p> <p>8 executive, so he's basically the physician face</p> <p>9 for the company in terms of representing the</p> <p>10 company from a clinical perspective. And I'm</p> <p>11 being nebulous, but his responsibilities are</p> <p>12 somewhat, you know, nebulous, and he sort of fills</p> <p>13 in when -- I mean, he does a lot of things at the</p> <p>14 behest of the CEO.</p> <p>15 Q. How long has he been at the company?</p> <p>16 A. Since sometime in 2004, I think the</p> <p>17 spring of 2004, or late winter.</p> <p>18 Q. Do you know where he worked before that?</p> <p>19 A. In New York. I believe it's SUNY.</p> <p>20 Q. In a medical role or --</p> <p>21 A. Administrative role. I don't really</p> <p>22 remember exactly what his title was. He was a</p>

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<p style="text-align: right;">54</p> <p>1 physician administrator.</p> <p>2 Q. Do you know whether he worked in a</p> <p>3 health- insurance-related capacity at SUNY?</p> <p>4 A. It wasn't. It was for the hospital</p> <p>5 system in the university.</p> <p>6 Q. Do you know whether or not his work at</p> <p>7 BC/BS of Massachusetts is his first involvement in</p> <p>8 the insurance industry?</p> <p>9 A. I think so, but I'm not sure.</p> <p>10 Q. Okay. Now, if you could turn to Page</p> <p>11 12142, please. This is the physician review and</p> <p>12 appeals unit. Is Mr. Picken still --</p> <p>13 A. No.</p> <p>14 Q. -- in the role?</p> <p>15 A. No.</p> <p>16 Q. Has he left the company?</p> <p>17 A. He has.</p> <p>18 Q. Who's in his position now?</p> <p>19 A. Dr. Lee Steingisser.</p> <p>20 Q. And we spoke about Dr. Steingisser</p> <p>21 before?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">56</p> <p>1 supplemental insurance designed to cover co-</p> <p>2 insurance payments?</p> <p>3 A. It was an HMO product. In lieu of</p> <p>4 standard Medicare, you could enroll in this. It</p> <p>5 was a Part C product.</p> <p>6 Q. To your knowledge, does BC/BS of</p> <p>7 Massachusetts have any supplemental insurance</p> <p>8 products which would cover the co-insurance</p> <p>9 obligations of Medicare beneficiaries?</p> <p>10 A. Yes.</p> <p>11 Q. Is that one product or numerous</p> <p>12 products?</p> <p>13 A. Numerous.</p> <p>14 Q. Okay. Do you know approximately how</p> <p>15 many products those are?</p> <p>16 A. No.</p> <p>17 Q. Okay. Are we talking dozens of them or</p> <p>18 a handful of them?</p> <p>19 A. There's some -- a handful of main</p> <p>20 product, but if you talk about things that are</p> <p>21 specifically written, there might be more, so...</p> <p>22 Q. Okay. Do you know how long Blue</p>
<p style="text-align: right;">55</p> <p>1 Q. What are the --</p> <p>2 A. Can I -- he's in his role in terms of</p> <p>3 supervising these physicians, but he's not titled</p> <p>4 the clinical coordination medical director. So he</p> <p>5 has a different role, but he supervises the</p> <p>6 physicians you have on this org. chart.</p> <p>7 Q. Now, one of the subentries here is BC65</p> <p>8 operations. What is BC65?</p> <p>9 A. Blue Care 65. It was our HMO Medicare</p> <p>10 product.</p> <p>11 Q. Now, you said "was," is that product no</p> <p>12 longer in existence?</p> <p>13 A. Not by that name anymore.</p> <p>14 Q. What is it called now?</p> <p>15 A. I believe it's Managed Medicare Blue or</p> <p>16 Blue Managed Medicare or something to that effect.</p> <p>17 Q. Now, when you say it's a Medicare</p> <p>18 product, what do you mean?</p> <p>19 A. It was one of the HMO products that CMS</p> <p>20 encouraged insurers to develop for Medicare</p> <p>21 patients.</p> <p>22 Q. Was it a product designed to provide</p>	<p style="text-align: right;">57</p> <p>1 Cross/Blue Shield of Massachusetts has had Medigap</p> <p>2 or supplemental insurance products?</p> <p>3 A. No, I don't.</p> <p>4 Q. Have they had those -- how long have you</p> <p>5 been aware of the existence of those products?</p> <p>6 MR. COCO: Objection.</p> <p>7 A. Since maybe the late '90s.</p> <p>8 Q. Now, is it fair to say that when</p> <p>9 deciding whether or not to offer a supplemental</p> <p>10 insurance product, Blue Cross/Blue Shield of</p> <p>11 Massachusetts would go through the same commercial</p> <p>12 analysis that it would perform in relation to any</p> <p>13 other insurance product?</p> <p>14 A. I don't --</p> <p>15 MR. COCO: Objection.</p> <p>16 A. I don't know.</p> <p>17 Q. Okay. Are you involved at all in the</p> <p>18 supplemental insurance products in any way?</p> <p>19 A. Not directly.</p> <p>20 Q. Okay. In your dealings with providers</p> <p>21 do you field any queries or concerns relating to</p> <p>22 the supplemental insurance plans?</p>

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<p style="text-align: right;">58</p> <p>1 A. Occasionally.</p> <p>2 Q. What sort of queries or concerns do you</p> <p>3 deal with in that regard?</p> <p>4 A. Usually related to the benefit</p> <p>5 structure.</p> <p>6 Q. What are you referring to when you say</p> <p>7 "the benefit structure"?</p> <p>8 A. Insurance plans have -- whatever the</p> <p>9 insurance plan covers is considered to be the</p> <p>10 benefit structure, so, you know, hospitalizations</p> <p>11 or whatever.</p> <p>12 Q. Do you receive queries from physicians</p> <p>13 pertaining to the reimbursement rates that they</p> <p>14 are paid in relation to share involvement in</p> <p>15 supplemental insurance plans?</p> <p>16 A. Occasionally.</p> <p>17 Q. Do you recall specific instances where</p> <p>18 you received queries of that kind?</p> <p>19 A. Occasionally the oncologists have talked</p> <p>20 to us about a certain subset of patients who are</p> <p>21 receiving services in their offices, and I've</p> <p>22 dealt with that a couple of times.</p>	<p style="text-align: right;">60</p> <p>1 state and provider service managers in that part</p> <p>2 of the state. I'm the chair of the professional</p> <p>3 credentialing and the institutional credentialing</p> <p>4 committees. I assist ancillary contracting, and I</p> <p>5 also assist the pharmacy team. And I chair the</p> <p>6 Blue Cross/Blue Shield P&amp;T committee.</p> <p>7 Q. How long have you been the chair of the</p> <p>8 P&amp;T committee?</p> <p>9 A. I don't remember exactly when, but I</p> <p>10 believe since 2003, sometime in 2003, maybe late</p> <p>11 2002.</p> <p>12 Q. How many people are on the P&amp;T</p> <p>13 committee?</p> <p>14 A. About 10 out -- well, 10, 12 outside</p> <p>15 clinicians, pharmacists, and then there's a bunch</p> <p>16 of Blue Cross/Blue Shield staff support. I'm not</p> <p>17 quite sure of the exact number.</p> <p>18 Q. The BC/BS employees who are on that</p> <p>19 committee, is it more than 10 or less than 10?</p> <p>20 A. Less than 10.</p> <p>21 Q. Okay. Do you know if it's -- are we</p> <p>22 talking about two or three or eight or nine, if</p>
<p style="text-align: right;">59</p> <p>1 Q. What sort of issues have the physicians</p> <p>2 raised in relation to the patients receiving</p> <p>3 services in their offices?</p> <p>4 A. Trying to understand what the</p> <p>5 supplemental insurance covers and what it doesn't</p> <p>6 cover.</p> <p>7 Q. Other than queries pertaining to the</p> <p>8 extent of coverage, are there any other queries</p> <p>9 that you recall in relation -- receiving in</p> <p>10 relation to those products?</p> <p>11 A. No. It's usually related about, you</p> <p>12 know, does the health plan cover this, and if -- I</p> <p>13 would think that's the majority. I may have --</p> <p>14 there may have been some other, but not that I can</p> <p>15 recall off the top of my head.</p> <p>16 Q. Okay. Now, we've talked about aspects</p> <p>17 of this, but let me ask you the question directly:</p> <p>18 In your capacity as a regional medical director,</p> <p>19 could you itemize your responsibilities in the</p> <p>20 areas in which you work?</p> <p>21 A. Responsible for assisting provider</p> <p>22 contracting in the central and western part of the</p>	<p style="text-align: right;">61</p> <p>1 you know?</p> <p>2 A. Well, they're non-voting members, so</p> <p>3 maybe six, seven.</p> <p>4 Q. Are there any -- amongst the BC/BS of</p> <p>5 Massachusetts employees are there other physicians</p> <p>6 other than yourself, or MDs?</p> <p>7 A. Dr. Goldbach, Dr. Fallon, occasionally</p> <p>8 Dr. Brumley.</p> <p>9 Q. Now, the outside clinicians you</p> <p>10 mentioned, are these individuals who have no</p> <p>11 employment relationship with Blue Cross/Blue</p> <p>12 Shield of Massachusetts?</p> <p>13 A. There's one who is part time -- he has a</p> <p>14 part-time employment with us. The rest are not.</p> <p>15 They're in our provider networks.</p> <p>16 Q. Now, does the -- is there any sort of a</p> <p>17 document or memorandum, an analysis, a procedure</p> <p>18 document that describes how the P&amp;T process</p> <p>19 functions at Blue Cross/Blue Shield of</p> <p>20 Massachusetts?</p> <p>21 A. There may be.</p> <p>22 Q. Okay. Are you aware of any such</p>

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<p style="text-align: right;">62</p> <p>1 documents?</p> <p>2 A. Not off the top of my head.</p> <p>3 Q. Can you describe for me how the P&amp;T</p> <p>4 committee does function?</p> <p>5 A. In terms of?</p> <p>6 Q. Well, how often does the P&amp;T committee</p> <p>7 meet?</p> <p>8 A. About four -- four to five times a year.</p> <p>9 Q. Now, in preparation for those meetings,</p> <p>10 is there any sort of analysis or strategy work</p> <p>11 that's done?</p> <p>12 A. Yes.</p> <p>13 Q. Who's responsible for coordinating that</p> <p>14 work?</p> <p>15 A. Matt Connell.</p> <p>16 Q. What is Mr. Connell's position?</p> <p>17 A. He's the director of the pharmacy</p> <p>18 program. And the people who work for him obviously</p> <p>19 do the actual stuff?</p> <p>20 Q. What sort of analysis of strategy work</p> <p>21 is performed typically in advance of the P&amp;T</p> <p>22 meeting?</p>	<p style="text-align: right;">64</p> <p>1 MR. COCO: Objection.</p> <p>2 Q. -- from manufacturers?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know whether or not Blue</p> <p>5 Cross/Blue Shield of Massachusetts contracts with</p> <p>6 manufacturers to receive rebates in relation to</p> <p>7 formulary placement of drugs?</p> <p>8 A. I don't know for 100 percent, but I</p> <p>9 don't believe so.</p> <p>10 Q. Now, in relation to the pricing of drugs</p> <p>11 which you referred to as the cost to BC/BS of</p> <p>12 Massachusetts for reimbursement, what sort of</p> <p>13 analysis is performed in advance of P&amp;T meetings?</p> <p>14 MR. COCO: Objection.</p> <p>15 A. I don't know.</p> <p>16 Q. Do you ever see that analysis?</p> <p>17 MR. COCO: Objection.</p> <p>18 A. Occasionally.</p> <p>19 Q. What sort of analysis do you recall</p> <p>20 having reviewed?</p> <p>21 A. The pricing of various drugs on the</p> <p>22 formulary tiers.</p>
<p style="text-align: right;">63</p> <p>1 MR. COCO: Objection.</p> <p>2 A. Usually it's looking at whatever drugs</p> <p>3 that we're going to bring onto the formulary and,</p> <p>4 you know, looking at -- you know, getting the</p> <p>5 clinical information together in terms of the</p> <p>6 discussion.</p> <p>7 Q. Anything else?</p> <p>8 A. I'm assuming that there's -- that the</p> <p>9 PBM does some work with the pharmacy team in terms</p> <p>10 of pricing or in terms of information regarding</p> <p>11 that.</p> <p>12 Q. Now, when you refer to "pricing," are</p> <p>13 you referring to the cost of the drug?</p> <p>14 A. To Blue Cross, yes.</p> <p>15 Q. Okay. In other words the amount that</p> <p>16 Blue Cross will have to pay out in reimbursement</p> <p>17 for that drug?</p> <p>18 A. Correct.</p> <p>19 MR. COCO: Objection.</p> <p>20 Q. Now, is there also analysis performed</p> <p>21 around the amount of rebates that Blue Cross may</p> <p>22 receive in relation to those drugs --</p>	<p style="text-align: right;">65</p> <p>1 Q. Now, why is that analysis relevant to</p> <p>2 the P&amp;T committee's work?</p> <p>3 MR. COCO: Objection.</p> <p>4 A. It's not.</p> <p>5 Q. Okay. If the work is not relevant to</p> <p>6 the P&amp;T committee's work, why is it performed in</p> <p>7 advance of P&amp;T meetings?</p> <p>8 MR. COCO: Objection.</p> <p>9 A. It's not necessarily formed in advance</p> <p>10 as it's part of the business process that goes on</p> <p>11 around the formulary selections.</p> <p>12 Q. Well, when you say "it's part of the</p> <p>13 business process that goes around formulary</p> <p>14 selections," are you nonetheless saying that it</p> <p>15 has no relevance or no connection to the formulary</p> <p>16 process?</p> <p>17 MR. COCO: Objection.</p> <p>18 A. The P&amp;T focuses on the clinical</p> <p>19 evaluation of the medications up for discussion</p> <p>20 and talks about them in terms of clinical</p> <p>21 effectiveness and safety. It is not a business</p> <p>22 discussion, and it isn't generally focused on cost</p>



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<p style="text-align: right;">66</p> <p>1 of or pricing.</p> <p>2 Q. I understand that the focus is clinical.</p> <p>3 A. Yes.</p> <p>4 Q. My question is, once the clinical merits</p> <p>5 have been fully evaluated, is there any</p> <p>6 consideration at all of economic issues or the</p> <p>7 cost of a drug in relation to decisions on</p> <p>8 formulary placement?</p> <p>9 A. Yes.</p> <p>10 Q. What sort of consideration is given to</p> <p>11 those issues?</p> <p>12 A. Internal business processes after the P</p> <p>13 and T's recommendation.</p> <p>14 Q. Can you help me understand how that</p> <p>15 process works? In other words, can you take me</p> <p>16 through the steps from when a drug is first</p> <p>17 considered to when a final decision is made on</p> <p>18 formulary placement?</p> <p>19 A. There is usually a post P&amp;T meeting</p> <p>20 where the clinical recommendations are reviewed,</p> <p>21 and then there's a series of meetings after that,</p> <p>22 usually one or two, where the business aspects of</p>	<p style="text-align: right;">68</p> <p>1 involved in that stage of the process?</p> <p>2 A. A lot of people.</p> <p>3 Q. All right. Is it a specific committee,</p> <p>4 or is it a working group?</p> <p>5 A. There are several committees.</p> <p>6 Q. Can you list the committees, please, to</p> <p>7 the extent you recall the names?</p> <p>8 A. There's an executive pharmacy committee,</p> <p>9 and there may be one other committee which the</p> <p>10 name escapes me.</p> <p>11 Q. Do you know how many people sit on the</p> <p>12 executive pharmacy committee?</p> <p>13 A. Maybe 10, 12, something like that.</p> <p>14 Q. Now, again just returning to the process</p> <p>15 part of this, after the P&amp;T committee has met,</p> <p>16 does it advance or forward a recommendation to the</p> <p>17 executive pharmacy committee?</p> <p>18 A. Yes.</p> <p>19 Q. Is that recommendation in writing?</p> <p>20 A. It's based on the notes of that meeting.</p> <p>21 Q. Are formal notes or minutes kept of all</p> <p>22 the P&amp;T meetings?</p>
<p style="text-align: right;">67</p> <p>1 the decisions are evaluated.</p> <p>2 Q. So if I understand correctly, at the</p> <p>3 actual meeting of the P&amp;T committee, the focus is</p> <p>4 entirely clinical; is that correct?</p> <p>5 A. We try very hard.</p> <p>6 Q. Okay. And a recommendation is then made</p> <p>7 as to the clinical merits of the drug at issue,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. There are then follow-up meetings where</p> <p>11 the economic issues pertaining to that drug are</p> <p>12 considered further; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And after that clinical input has been</p> <p>15 taken into consideration, after economic input has</p> <p>16 been taken into consideration, the final decision</p> <p>17 is then made as to formulary placement; is that a</p> <p>18 fair statement?</p> <p>19 MR. COCO: Objection.</p> <p>20 A. Yes.</p> <p>21 Q. Now, the second part of that process</p> <p>22 where the economic issues are considered, who is</p>	<p style="text-align: right;">69</p> <p>1 A. Yes, yes, to the best of my knowledge.</p> <p>2 Q. Who maintains those notes?</p> <p>3 A. Pharmacy department.</p> <p>4 Q. Is there someone in particular?</p> <p>5 A. I believe Paul Cutroni.</p> <p>6 Q. What is Mr. Cutroni's position?</p> <p>7 A. He's a clinical pharmacist.</p> <p>8 Q. Now, I understand that the focus at</p> <p>9 those meetings is clinical. Is there ever any</p> <p>10 economic discussion at the P&amp;T meeting itself?</p> <p>11 A. Occasionally.</p> <p>12 Q. In what context does that -- do those</p> <p>13 issues come up at the P&amp;T meeting itself as</p> <p>14 opposed to the later meetings?</p> <p>15 A. It's if the membership of the committee</p> <p>16 would say that something in regards to some sort</p> <p>17 of knowledge they had about, you know, there's</p> <p>18 already a generic in this field, why -- you know,</p> <p>19 which is more cost- effective. Why would we add</p> <p>20 the branded drug, that kind of thing. It's only</p> <p>21 outpatient pharmacy that they're talking about.</p> <p>22 Q. Is there anything in the procedural</p>



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<p style="text-align: right;">70</p> <p>1 rules or the traditions of the committee that</p> <p>2 would render that inappropriate, or is that fine?</p> <p>3 MR. COCO: Objection.</p> <p>4 A. We try -- we start each meeting saying</p> <p>5 that the focus of the meeting is on the clinical</p> <p>6 merits of the medication being discussed and that</p> <p>7 we will try to maintain our discussions on that</p> <p>8 piece.</p> <p>9 Q. So the aim is to preserve a clinical</p> <p>10 focus at that piece and leave the economic</p> <p>11 analysis for the executive pharmacy committee</p> <p>12 meeting that follows; is that a fair statement?</p> <p>13 A. Correct.</p> <p>14 Q. Now, have there been instances, to your</p> <p>15 knowledge, where the P&amp;T committee does recommend</p> <p>16 the inclusion of a drug on the formulary, but the</p> <p>17 executive pharmacy committee then provides input</p> <p>18 as a result in which the drug is not placed on</p> <p>19 formulary?</p> <p>20 A. Not that I can recall.</p> <p>21 Q. Is the BC/BS of Massachusetts formulary</p> <p>22 tiered?</p>	<p style="text-align: right;">72</p> <p>1 Q. When you say a "separate function," what</p> <p>2 are you referring to here?</p> <p>3 A. It's a clinical evaluation versus a</p> <p>4 business decision.</p> <p>5 Q. And would it be fair to say that both of</p> <p>6 those aspects, the clinical analysis and the</p> <p>7 business function, are relevant to BC/BS's</p> <p>8 decision as to whether or not or what formulary</p> <p>9 position to give to a particular drug?</p> <p>10 MR. COCO: Objection.</p> <p>11 A. In my opinion, yes.</p> <p>12 Q. In other words, after BC/BS has fully</p> <p>13 evaluated the clinical merits of a particular</p> <p>14 drug, it sees it as only appropriate to also then</p> <p>15 consider the economic impact to its business of</p> <p>16 using one drug versus another or giving a drug a</p> <p>17 certain tier placement versus another?</p> <p>18 MR. COCO: Objection.</p> <p>19 Q. Is that a fair statement?</p> <p>20 A. I mean, I don't know what to say to</p> <p>21 that.</p> <p>22 Q. Would you like me to rephrase the</p>
<p style="text-align: right;">71</p> <p>1 A. Yes.</p> <p>2 Q. Are there any instance -- well, does the</p> <p>3 -- withdraw that.</p> <p>4 Does the P&amp;T committee make a</p> <p>5 recommendation simply as to inclusion or</p> <p>6 exclusion, or does it also recommend a tier</p> <p>7 position?</p> <p>8 A. Generally not -- we don't generally</p> <p>9 discuss tiering.</p> <p>10 Q. Now, as the chair of the -- you are the</p> <p>11 chair of the P&amp;T committee; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. As the chair of the P&amp;T committee, do</p> <p>14 you think there's anything at all inappropriate</p> <p>15 about the fact that the P&amp;T committee</p> <p>16 recommendations are then subject to review by the</p> <p>17 executive pharmacy committee?</p> <p>18 MR. COCO: Objection.</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 MR. COCO: Objection.</p> <p>22 A. Separate function.</p>	<p style="text-align: right;">73</p> <p>1 question?</p> <p>2 A. Please.</p> <p>3 Q. Okay.</p> <p>4 MR. COCO: Just before you do, we've be</p> <p>5 going for a while, so if you can get to a point</p> <p>6 where we can take a break, I would appreciate it.</p> <p>7 MR. MANGI: Sure. We can do that in a</p> <p>8 couple of minutes.</p> <p>9 Q. We've talked now about different aspects</p> <p>10 of the P&amp;T and formulary process, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. We discussed one aspect of it</p> <p>13 which is the P&amp;T meeting itself where the focus is</p> <p>14 principally economic, right?</p> <p>15 A. No.</p> <p>16 Q. I'm sorry, withdraw that. That came out</p> <p>17 wrong.</p> <p>18 We discussed the first aspect of the</p> <p>19 process which is the P&amp;T meeting where the focus</p> <p>20 is primarily on the clinical merits of the drugs</p> <p>21 at issue, right?</p> <p>22 A. Correct.</p>

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<p style="text-align: right;">74</p> <p>1 MR. COCO: Objection.</p> <p>2 Q. And then we discussed the executive</p> <p>3 pharmacy committee process where economic issues</p> <p>4 are among those considered in relation to drug</p> <p>5 placement on formulary, right?</p> <p>6 MR. COCO: Objection.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So my question is: Is it fair to</p> <p>9 say that, in your view as the chair of the P&amp;T</p> <p>10 committee, it's only appropriate that after the</p> <p>11 clinical merits of drug selection and placement</p> <p>12 have been fully considered, some attention also be</p> <p>13 given to the economic impact of choosing one drug</p> <p>14 versus another; is that a fair statement?</p> <p>15 MR. COCO: Objection.</p> <p>16 A. It's a separate business process.</p> <p>17 Q. Oh, I understand that. I don't doubt</p> <p>18 it's a separate business process. My question is</p> <p>19 simply: Would it be fair to say that both aspects</p> <p>20 of the process, in other words, considering the</p> <p>21 clinical process and the economic process, are</p> <p>22 necessary and appropriate parts of the final</p>	<p style="text-align: right;">76</p> <p>1 Q. Do you recall any of the individuals who</p> <p>2 are on that committee, if not the name of the</p> <p>3 committee itself?</p> <p>4 A. It's pretty much the same. It's like a</p> <p>5 -- there's the P&amp;T committee, and then there's</p> <p>6 another meeting and there's -- there's like a prep</p> <p>7 for the final, and the pharmacy executive is the</p> <p>8 final committee.</p> <p>9 Q. I would like to get a better</p> <p>10 understanding of the documents that are generated</p> <p>11 throughout that process. Now we've spoken about</p> <p>12 the analysis that's done prior to meetings, and</p> <p>13 we've discussed the fact that minutes or notes are</p> <p>14 kept of the P&amp;T meetings themselves, right?</p> <p>15 A. Correct.</p> <p>16 Q. And those notes are then forwarded onto</p> <p>17 the executive pharmacy committee and any other</p> <p>18 committees that are involved in the economic</p> <p>19 analysis stage?</p> <p>20 A. Correct.</p> <p>21 Q. Are there any other documents that are</p> <p>22 forwarded to the executive pharmacy committee for</p>
<p style="text-align: right;">75</p> <p>1 decision on formulary placement?</p> <p>2 MR. COCO: Objection.</p> <p>3 Q. Is that a fair statement?</p> <p>4 MR. COCO: Objection.</p> <p>5 A. Yes.</p> <p>6 MR. MANGI: We can take a five-minute</p> <p>7 break.</p> <p>8 (Recess taken.)</p> <p>9 Q. So, Dr. Cook, before the break we were</p> <p>10 talking about the P&amp;T process.</p> <p>11 A. Yes.</p> <p>12 Q. I would like to ask you a few more</p> <p>13 questions about that.</p> <p>14 The executive pharmacy committee, I</p> <p>15 believe you commenced there may be other</p> <p>16 committees that are involved in that economic</p> <p>17 analysis of the formulary decisions, but you don't</p> <p>18 recall what they are; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Are we talking of one committee,</p> <p>21 or is there more than one committee?</p> <p>22 A. I'm thinking of one committee.</p>	<p style="text-align: right;">77</p> <p>1 use in its deliberations?</p> <p>2 A. Usually a document from our PBM looking</p> <p>3 at the various formulary options in terms of</p> <p>4 pricing and sometimes a number of people using</p> <p>5 certain medications that are on our formularies.</p> <p>6 Q. The document from the PBM looking at the</p> <p>7 formulary options, is -- the current PBM which</p> <p>8 BC/BS of Massachusetts is Express Scripts; is that</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Now, does Express Scripts manage the</p> <p>12 BC/BS of Massachusetts formulary, or does it</p> <p>13 merely provide input into the process?</p> <p>14 MR. COCO: Objection.</p> <p>15 A. What do you mean by "manage"?</p> <p>16 Q. Well, let's break it down. In terms of</p> <p>17 -- do I recall correctly you said you don't know</p> <p>18 whether or not BC/BS of Massachusetts has rebate</p> <p>19 contracts with manufacturers?</p> <p>20 A. I said I don't believe so, but I don't</p> <p>21 know 100 percent.</p> <p>22 Q. Okay. In terms of the -- all decisions</p>

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<p style="text-align: right;">78</p> <p>1 pertaining to the formulary, in other words, what  2 gets on, what gets off, what's on what tier of the  3 formulary, are those all decisions that are made  4 by BC/BS of Massachusetts employees?  5 A. To the best of my knowledge.  6 Q. With input from the outside persons you  7 described earlier sitting on the P&amp;T committee?  8 A. And other outside physicians and  9 clinicians.  10 Q. Okay. Does Express Scripts play any  11 role in the formulary process other than providing  12 the analysis you just described to the executive  13 pharmacy committee?  14 A. That's my understanding of their role.  15 Q. Now, the pricing analysis you described  16 that they do provide to the committee, what is  17 that? What is that you look at?  18 MR. COCO: Objection.  19 A. It looks at the typical price of a  20 typical prescription fill, so whatever -- you  21 know, 30-day supply of some sort of medication, it  22 looks at that pricing.</p>	<p style="text-align: right;">80</p> <p>1 A. There are medical policies that would  2 influence -- that would relate to clinical  3 appropriate use of those types of medications.  4 Q. Now, those medical policies, what sort  5 of areas -- what issues do those deal with?  6 A. What do you mean by that?  7 Q. Well, you said there are medical  8 policies pertaining to appropriate use of the  9 product. And I'm trying to understand what  10 factors are considered in determining whether or  11 not a use is appropriate.  12 MR. COCO: Objection.  13 A. It's pretty much along the FDA  14 guidelines with input from the clinical community  15 in terms of, you know, what, you know, is common  16 practice, but usually they pretty much follow FDA  17 guidelines.  18 Q. Is the focus there purely clinical, or  19 are there any other issues involved?  20 MR. COCO: Objection.  21 A. What do you mean by any other issues?  22 Q. Well, in terms of determining whether or</p>
<p style="text-align: right;">79</p> <p>1 Q. Does BC/BS of Massachusetts contract  2 directly with retail pharmacies, or are all of  3 those contracts through the PB network?  4 A. I don't believe we contract directly  5 with the pharmacies.  6 Q. Does BC/BS of Massachusetts currently  7 have physician administered drugs on formulary?  8 A. No.  9 Q. So the only drugs that are subject to  10 formulary control at the present time are self-  11 administered drugs; is that correct?  12 A. Medications that you would be getting in  13 a retail pharmacy.  14 Q. Pills and patches and so on?  15 A. Pills and -- pills and maybe some  16 injectables if it's something you self- inject.  17 Q. So in relation to physician-administered  18 drugs, a physician is free to prescribe any drug  19 he chooses to a BC/BS of Massachusetts member, and  20 that drug will be covered by BC/BS of  21 Massachusetts; is that correct?  22 MR. COCO: Objection.</p>	<p style="text-align: right;">81</p> <p>1 not the use of a drug is appropriate in a given  2 condition, is the analysis limited to the medical  3 or clinical efforts of using a drug given a  4 particular patient's condition, or is there  5 anything else that's considered?  6 A. It's clinical.  7 MR. COCO: Objection.  8 Q. So assuming a doctor's use of a drug is  9 clinically appropriate, consistent with FDA  10 guidelines, any physician administered drug he  11 chooses to administer to a patient will then be  12 covered and reimbursed by Blue Cross/Blue Shield  13 of Massachusetts; is that correct?  14 MR. COCO: Objection.  15 A. If it meets our medical policy  16 guidelines and it meets the subscriber benefit  17 package, yeah.  18 Q. By the way, we spoke earlier about the  19 economic -- I'm sorry, about the analyses that is  20 done in advance of the P&amp;T meetings which may  21 include some economic analysis. Is that package  22 also what's before the executive pharmacy</p>

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<p style="text-align: right;">82</p> <p>1 committee?</p> <p>2 A. There is an economic analysis that's</p> <p>3 done that sometimes occurs before the committee</p> <p>4 some -- P&amp;T committee sometimes after, but that's</p> <p>5 the business piece that that group looks at.</p> <p>6 Q. Now, after the executive pharmacy</p> <p>7 committee makes their decision, are there</p> <p>8 decisions memorialized in any particular form?</p> <p>9 A. Minutes.</p> <p>10 Q. So what happens after their meeting is</p> <p>11 concluded and the minutes have been generated?</p> <p>12 MR. COCO: Objection.</p> <p>13 A. You mean process-wise?</p> <p>14 Q. Yes.</p> <p>15 A. Depending on whatever decisions were</p> <p>16 made, then they're implemented by the pharmacy</p> <p>17 team.</p> <p>18 Q. Then those minutes are implemented by</p> <p>19 the pharmacy team who move into an implementation</p> <p>20 phase?</p> <p>21 A. Correct.</p> <p>22 Q. Are there any other documents generated</p>	<p style="text-align: right;">84</p> <p>1 were the parameters of what you were looking for?</p> <p>2 A. Anything basically having to do with AWP</p> <p>3 or pricing on any kind of physician -- medications</p> <p>4 administered in physicians' offices.</p> <p>5 Q. When you say "pricing," what are you</p> <p>6 referring to there?</p> <p>7 A. I mean, AWP -- I mean, anything having</p> <p>8 to do with -- basically anything having to do with</p> <p>9 drugs that were administered in a physician's</p> <p>10 office, anything with the word "AWP" in it.</p> <p>11 Q. Okay. Did you look for any documents in</p> <p>12 subject areas that did not have the actual phrase</p> <p>13 "AWP"?</p> <p>14 A. Anything that I thought would be</p> <p>15 relevant to that topic, which was the broader</p> <p>16 topic about pharmaceuticals used in physicians'</p> <p>17 offices.</p> <p>18 Q. Now we spoke earlier about the fact that</p> <p>19 physicians who want to raise issues about</p> <p>20 reimbursement will sometimes come to the medical</p> <p>21 director, such as yourself. Did you look for</p> <p>22 those communications?</p>
<p style="text-align: right;">83</p> <p>1 in the process that are part of what's sent to the</p> <p>2 implementation team?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. Now, what did you do in preparation for</p> <p>5 your deposition today?</p> <p>6 A. I -- as requested, I reviewed my files,</p> <p>7 my paper files and my e-mail files to see if any</p> <p>8 kind of information that I had on the subject</p> <p>9 matter, and I submitted them to Mr. Skwara, and</p> <p>10 then I had a pre-meeting just to discuss with</p> <p>11 counsel this deposition.</p> <p>12 Q. Okay. When did you have a pre-meeting</p> <p>13 with counsel?</p> <p>14 A. Friday.</p> <p>15 Q. And who was present at that meeting?</p> <p>16 A. These gentlemen.</p> <p>17 Q. All three of them?</p> <p>18 A. All three of them.</p> <p>19 Q. And how long was that meeting for?</p> <p>20 A. Half hour, 45 minutes? I can't remember</p> <p>21 exactly.</p> <p>22 Q. Now, when you reviewed your files, what</p>	<p style="text-align: right;">85</p> <p>1 A. I looked through my files, yes.</p> <p>2 Q. And did you locate any such</p> <p>3 communications?</p> <p>4 A. I don't believe so specifically on that.</p> <p>5 Or I might -- you know, I honestly can't remember</p> <p>6 what I gave Mr. Skwara, because I gave it to him</p> <p>7 so long ago. There may have been something like</p> <p>8 that, but I did look at whatever I could find.</p> <p>9 Q. When you say you provided that material</p> <p>10 a long time ago, when did you provide it?</p> <p>11 A. I started -- well, mommy dementia. I</p> <p>12 started, I think, at the end of last year looking.</p> <p>13 Q. Okay. And when did you actually provide</p> <p>14 the materials to Mr. Skwara?</p> <p>15 A. I think most of it towards the, you</p> <p>16 know, like December -- November, December 2005.</p> <p>17 Q. Okay. Between December of '05 and today</p> <p>18 have you searched your files for any documents</p> <p>19 generated in that time frame or that you received</p> <p>20 in that time frame?</p> <p>21 A. I haven't, but I'm not aware that I</p> <p>22 received anything.</p>



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<p style="text-align: right;">86</p> <p>1 Q. Now, in addition to your work for BC/BS 2 of Massachusetts, do you currently sit on any 3 boards or hold any memberships? 4 A. Mind Body Medical Institute, I sit on 5 the board. 6 Q. What are your responsibilities on an 7 ongoing basis as a board member? 8 A. I'm a clerk, theoretically, of the 9 board. 10 Q. Do you mean by that you maintain minutes 11 of meeting or -- 12 A. I'm listed as the clerk. I don't 13 personally maintain the minutes. I see the 14 minutes, I look at them, but I don't personally 15 maintain the minutes. 16 Q. Any other responsibilities there? 17 A. Just normal board member kind of stuff. 18 Q. Now, you mentioned you were searching 19 your files for, including other things, documents 20 relating to AWP. When is the first time you heard 21 that phrase "AWP," if you recall? 22 A. I don't recall exactly when.</p>	<p style="text-align: right;">88</p> <p>1 from AMA, and I get the journal from the American 2 College of Internal Medicine. 3 Q. Are you familiar with Red Book or First 4 DataBank? 5 A. I've heard the names. 6 Q. Do you have an understanding as to what 7 those are? 8 A. Not clearly, no. 9 Q. Okay. In what context have you heard 10 those names? 11 A. In some of the pharmacy discussion of 12 Blue Cross/Blue Shield. 13 Q. Are you aware that these are price 14 reporting services? 15 A. I may be aware of that. I couldn't tell 16 you the details of it, but I -- yeah. 17 Q. Do you know what's reported in those 18 services? 19 A. No. It's more like you have to check 20 the Red Book level of -- yeah, I don't know what 21 the elements are of the reporting. 22 Q. Have you ever actually seen a</p>
<p style="text-align: right;">87</p> <p>1 Q. Was it within the last five years or 2 more than that? 3 A. I really don't recall. 4 Q. Okay. Are you familiar with the term 5 "W-A-C," or "WAC"? 6 A. No. 7 Q. You've never heard that term? 8 A. Not that I can remember. 9 Q. I'll represent to you WAC stands for 10 wholesale acquisition cost. Have you ever heard 11 that phrase or phrase or term? 12 A. Maybe, but it doesn't really ring a big 13 bell. 14 Q. Now, do you subscribe to any industry 15 periodicals or publications to keep abreast of 16 developments in your industry? 17 A. What industry? 18 Q. The healthcare industry, the drug 19 pricing industry. 20 A. The healthcare industry, New England 21 Medical -- you know, the journal of New England 22 Medical journal, and I get a journal from JAMA,</p>	<p style="text-align: right;">89</p> <p>1 publication or printout from either of those 2 services? 3 A. Not that I am aware of. 4 Q. Now, does BC/BS of Massachusetts 5 currently -- well, withdraw that. 6 Are you familiar with the term 7 "indemnity plan"? 8 A. Yes. 9 Q. What's your understanding of an 10 indemnity plan? 11 A. It's a type of insurance. 12 Q. And what are the characteristics of an 13 indemnity plan? 14 A. Well, it's not very popular anymore. It 15 tends to have less benefit structure than some of 16 the managed care plans, and it's a diminishing 17 product -- I would, in our portfolio. 18 Q. Now, do you have an understanding as to 19 what a physician would submit to Blue Cross/Blue 20 Shield of Massachusetts when seeking reimbursement 21 pursuant to an indemnity plan? 22 A. Not specifically, no.</p>